

§ 207.8

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of the establishment of the list and a certificate of service shall then be filed.

(2) If a party's request under paragraph (g) of this section is granted, the Secretary shall accept the nondisclosable confidential business information into the record. The party shall serve the submission containing such information in accordance with the requirements of § 207.3(b) and paragraph (f)(1) of this section, with the information redacted from the copies served.

(3) The Secretary shall not accept for filing into the record of an investigation submissions filed without a proper certificate of service. Failure to comply with paragraph (f) of this section may result in denial of party status and such sanctions as the Commission deems appropriate. Business proprietary information in submissions must be dealt with as required by § 207.3(c).

(g) *Exemption from disclosure*—(1) *In general.* Any person may request exemption from the disclosure of business proprietary information under administrative protective order, whether the person desires to include such information in a petition filed under § 207.10, or any other submission to the Commission during the course of an investigation. Such a request shall only be granted if the Secretary finds that such information is nondisclosable confidential business information. As defined in § 201.6(a)(2) of this chapter, nondisclosable confidential business information is privileged information, classified information, or specific information (*e.g.*, trade secrets) of a type for which there is a clear and compelling need to withhold from disclosure. The request will be granted or denied not later than thirty (30) days (ten (10) days in a preliminary phase investigation) after the date on which the request is filed.

(2) *Request for exemption.* A request for exemption from disclosure must be filed with the Secretary in writing with the reasons therefor. At the same time as the request is filed, one copy of the business proprietary information in question must be lodged with the Secretary solely for the purpose of obtaining a determination as to the request. The business proprietary information

for which exemption from disclosure is sought shall remain the property of the requester, and shall not become or be incorporated into any agency record until such time as the request is granted. A request should, when possible, be filed two business days prior to the deadline, if any, for filing the document in which the information for which exemption from disclosure is sought is proposed to be included. If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. Such a request shall only be granted if the Secretary finds that such information is privileged information, classified information, or specific information of a type for which there is a clear and compelling need to withhold from disclosure. The Secretary shall promptly notify the requester as to whether the request has been approved or denied.

(3) *Procedure if request is approved.* If the request is approved, the person shall file three versions of the submission containing the nondisclosable confidential business information in question. One version shall contain all business proprietary information, bracketed in accordance with § 201.6 of this chapter and § 207.3. The other two versions shall conform to and be filed in accordance with the requirements of § 201.6 of this chapter and § 207.3, except that the specific information as to which exemption from disclosure was granted shall be redacted from the submission.

(4) *Procedure if request is denied.* If the request is denied, the copy of the information lodged with the Secretary shall promptly be returned to the requester. The requester may file the submission in question without that information, in accordance with the requirements of § 207.3.

[44 FR 76468, Dec. 26, 1979, as amended at 59 FR 66723, Dec. 28, 1994; 61 FR 37829, July 22, 1996; 68 FR 32978, June 3, 2003; 70 FR 8512, Feb. 22, 2005; 76 FR 61942, Oct. 6, 2011]

§ 207.8 Questionnaires to have the force of subpoenas; subpoena enforcement.

Any questionnaire issued by the Commission in connection with any investigation under title VII of the Act

may be issued as a subpoena and subscribed by a Commissioner, after which it shall have the force and effect of a subpoena authorized by the Commission. Whenever any party or any other person fails to respond adequately to such a subpoena or whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Commission may:

(a) Use the facts otherwise available in making its determination;

(b) Seek judicial enforcement of the subpoena pursuant to 19 U.S.C. 1333;

(c) Make inferences adverse to such person's position, if such person is an interested party that has failed to cooperate by not acting to the best of its ability to comply with a request for information; and

(d) Take such other actions as necessary to obtain needed information.

[61 FR 37831, July 22, 1996]

Subpart B—Preliminary Determinations

SOURCE: 56 FR 11927, Mar. 21, 1991, unless otherwise noted.

§ 207.10 Filing of petition with the Commission.

(a) *Filing of the petition.* Any interested party who files a petition with the administering authority pursuant to section 702(b) or section 732(b) of the Act in a case in which a Commission determination under title VII of the Act is required, shall file copies of the petition and all exhibits, appendices, and attachments thereto, pursuant to 201.8 of this chapter, with the Secretary on the same day the petition is filed with the administering authority. A paper original and eight (8) true paper copies of a petition shall be filed. One copy of all exhibits, appendices, and attachments to the petition shall be filed in electronic form on CD-ROM, DVD, or other portable electronic format approved by the Secretary. If the petition complies with the provisions of § 207.11, it shall be deemed to be properly filed on the date on which the requisite number of copies of the peti-

tion is received by the Secretary, provided that, if the petition is filed with the Secretary after 12:00 noon, eastern time, the petition shall be deemed filed on the next business day. The Secretary shall notify the administering authority of that date. Notwithstanding § 201.11 of this chapter, a petitioner need not file an entry of appearance in the investigation instituted upon the filing of its petition, which shall be deemed an entry of appearance.

(b) *Service of the petition.* (1)(i) The Secretary shall promptly notify a petitioner when, before the establishment of a service list under § 207.7(a)(4), he or she approves an application under § 207.7(a). When practicable, this notification shall be made by facsimile transmission. A copy of the petition including all business proprietary information shall then be served by petitioner on those approved applicants in accord with § 207.3(b) within two (2) calendar days of the time notification is made by the Secretary.

(ii) The petitioner shall serve persons enumerated on the list established by the Secretary pursuant to § 207.7(a)(4) that have not been served pursuant to paragraph (b)(1)(i) of this section within two (2) calendar days of the establishment of the Secretary's list.

(2) A copy of the petition omitting business proprietary information shall be served by petitioner on those persons enumerated on the list established by the Secretary pursuant to § 201.11(d) of this chapter within two (2) calendar days of the establishment of the Secretary's list.

(3) Service of the petition shall be attested by filing a certificate of service with the Commission.

(c) *Amendments and withdrawals; critical circumstances.* (1) Any amendment or withdrawal of a petition shall be filed on the same day with both the Secretary and the administering authority, without regard to whether the requester seeks action only by one agency.

(2) When not made in the petition, any allegations of critical circumstances under section 703 or section 733 of the Act shall be made in an amendment to the petition and shall be